(17)

No. 99-536

Supreme Court, U.S.
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In The

Supreme Court of the United States

ROGER REEVES,

Petitioner,

v.

SANDERSON PLUMBING PRODUCTS, INC.,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

JOINT APPENDIX

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Petition For Writ Of Certiorari Filed September 15, 1999
Certiorari Granted November 8, 1999

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39 pp

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RELEVANT DOCKET ENTRIES

U.S. District Court
Northern District of Mississippi (Eastern)

CIVIL DOCKET FOR CASE #:96-CV-197

6/28/96	1	COMPLAINT for job discrimination (age) FILING FEE $120 RECEIPT #43856; jury demand (jsw)
6/28/96	–	**Set Jury Flag (jsw)
6/28/96	–	NOTICE OF ASSIGNMENT Chief Judge L. T. Senter Jr. and Magistrate Judge Jerry A. Davis (jsw)
6/28/96	–	SUMMONS (ES) issued for Sanderson Plmbg Prod (jsw)
7/3/96	–	NOTICE of Intent to Serve Subpoena Duces Tecum by Roger Reeves (rke)
7/9/96	2	NOTICE OF SERVICE of pre-discovery disclosure by Roger Reeves to Sanderson Plmbg Prod (dlh)
7/9/96	3	REQUEST FOR WAIVER of Service as to Sanderson Plmbg Prod 7/8/96 Waiver of Service due by 8/7/96 for Sanderson Plmbg Prod (dlh)
7/15/96	4	WAIVER OF SERVICE Returned Executed as to Sanderson Plmbg Prod 7/8/96 Answer due on 9/6/96 for Sanderson Plmbg Prod (dlh)
7/15/96	5	PROOF OF SERVICE of Subpoena by Roger Reeves Subpoena served on Tom Lord (dlh)

9/5/96	6	ANSWER to Complaint by Sanderson Plmbg Prod (Attorney Taylor B. Smith); jury demand (jlj)
9/5/96	7	NOTICE OF SERVICE of pre-discovery disclosure by Sanderson Plmbg Prod to Roger Reeves (jlj)
9/10/96	–	Case Management Conference set at 10:00 10/16/96 Location: Aberdeen before Magistrate Judge Jerry A. Davis (dlh)
9/17/96	–	REFUSAL TO CONSENT TO TRIAL BY MAGISTRATE JUDGE (jlj)
9/18/96	8	CONSENT by Roger Reeves to refer case to Magistrate Judge for trial (dlh)
10/18/96	9	CIVIL MINUTES for: CMC held 10/16/96; ELT 3 days; JT set 9/8/97 in Aberdeen before Mag Judge Davis; case management order entered setting deadlines; poor chance of settlement (dlh)
10/18/96	–	Case Management Conference held on 10/16/96 (dlh)
10/18/96	10	CASE MANAGEMENT PLAN AND SCHEDULING ORDER Case Assigned to CJRA Track: Standard Scheduling Deadlines: Final Pretrial Conference for 10:00 8/11/97 Aberdeen before Mag Judge Davis; Discovery cutoff 3/31/97; Joining of parties, amending of pleadings by 1/15/97; Pla. Designation of Experts by 12/31/96; Dft Designation of Experts by 1/31/97; Motion Filing deadline on 4/15/97; Case Status Report due 4/30/97. (signed by Magistrate Judge Jerry A. Davis on 10/17/96) (dlh)

10/22/96	–	NOTICE of MVD/Jury Trial set at 9:40 9/8/97 Location: Aberdeen before Chief Judge L. T. Senter Jr. (rke)
10/24/96	–	NOTICE of Final Pretrial Conference set at 10:00 8/11/97 Location: Aberdeen before Magistrate Judge Jerry A. Davis (dlh)
11/5/96	11	NOTICE OF SERVICE of first set of requests by Sanderson Plmbg Prod to Roger Reeves (dlh)
11/27/96	12	NOTICE OF SERVICE of answers to interrogatories and request for production and first set of interrogatories and request for production by Roger Reeves to Sanderson Plmbg Prod (jlj)
11/27/96	13	RESPONSE TO REQUEST FOR ADMISSIONS by Roger Reeves (jlj)
12/19/96	14	NOTICE by Sanderson Plmbg Prod to take deposition of Roger Reeves 2/25/97 Columbus (dlh)
12/27/96	15	NOTICE OF SERVICE of response to interrogatories and requests for production by Sanderson Plmbg Prod to Roger Reeves (jlj)
1/13/97	16	NOTICE OF SERVICE of second set of request for production by Roger Reeves to Sanderson Plmbg Prod (jlj)
2/5/97	17	NOTICE by Roger Reeves to take deposition of corporate representative of Sanderson Plumbing 2/25/97 Columbus (dlh)
2/6/97	–	**Terminated document [8-1] (dlh)

2/11/97	18	NOTICE OF SERVICE of response to second set of requests for production by Sanderson Plmbg Prod to Roger Reeves (jlj)
4/15/97	19	MOTION by Sanderson Plmbg Prod for Summary Judgment (jlj)
4/28/97	20	MOTION by Roger Reeves to Extend Time to file response and brief in opposition to motion for summary judgment (dlh)
4/28/97	21	ORDER granting [20-1] motion to Extend Time to file response and brief in opposition to motion for summary judgment, Response to Motion reset to 5/16/97 for [19-1] motion for Summary Judgment (signed by Chief Judge L. T. Senter Jr. on 4/28/97) Date of Entry: 4/28/97 (dlh)
5/19/97	22	RESPONSE by Roger Reeves to [19-1] motion for Summary Judgment by Sanderson Plmbg Prod (in expandable folder) (dlh)
8/11/97	23	CIVIL MINUTES for: FPTC held 8/11/97; ELT 4 days; PTO submitted at FPTC; poor chance of settlement (dlh)
8/11/97	–	Final Pretrial Conference held 8/11/97 (dlh)
8/12/97	24	PRETRIAL ORDER filed; ELT 4 days (signed by Chief Judge L. T. Senter Jr. on 8/12/97) (dlh)
8/19/97	25	ORDER denying [19-1] motion for Summary Judgment (signed by Chief Judge L. T. Senter Jr. on 8/19/97) Date of Entry: 8/19/97 (jlj)

9/8/97	26	ORDER impaneling jury (jury list attached) (mhg)
9/12/97	27	CIVIL MINUTES for: Jury Trial held 9/10-12/97 with voir dire held 9/8/97 before Chief Judge L. T. Senter, Jr. in Aberdeen: Verdict for plaintiff in sum of $35,000; oral motions of defendant for judgment as a matter of law overruled; oral motion of defendant to dismiss severance pay claim granted; Court Reporter: Jim Moody (mhg)
9/12/97	28	Exhibit list by Roger Reeves, Sanderson Plmbg Prod (witness list attached) (mhg)
9/12/97	29	INTERROGATORIES propounded to the jury finding for the plaintiff in sum of $35,000 and that discrimination was willful (mhg)
9/12/97	30	Jury Note filed (mhg)
9/12/97	31	RESPONSE of court to [30-1] notes jury (mhg)
9/12/97	32	Jury instructions given (mhg)
9/12/97	33	Jury instructions refused (mhg)
9/12/97	–	Jury Trial held 9/10-12/97 (mhg) [Entry date 09/15/97]
9/18/97	34	MOTION by Roger Reeves to Hold in Abeyance attorneys fees pending appeal (jlj)
9/18/97	35	JUDGMENT for Roger Reeves in the sum of $70,000, 5.58 percent and costs against Sanderson Plmbg Prod (on 9/18/97) COB #50 pg. 19 Date of Entry: 9/18/97 (mhg)
9/18/97	–	Case closed (mhg)

9/19/97	36	MOTION by Sanderson Plmbg Prod for Judgment as a Matter of Law or in the alternative, for a new trial, and for stay of execution of judgment (jlj)
9/19/97	37	ORDER granting [34-1] motion to Hold in Abeyance attorneys fees pending appeal; motion shall be filed 14 days after appeal mandate (signed by Chief Judge L. T. Senter Jr. on 9/19/97) Date of Entry: 9/19/97 (mhg)
9/26/97	38	MOTION by Roger Reeves for front pay (jlj)
10/10/97	39	RESPONSE by Sanderson Plmbg Prod to [38-1] motion for front pay by Roger Reeves (jlj)
5/21/98	40	MEMORANDUM OPINION (signed by Chief Judge L. T. Senter Jr. on 5/21/98) (dlh)
5/21/98	41	ORDER granting [38-1] motion for front pay, denying [36-1] motion for Judgment as a Matter of Law or in the alternative, for a new trial, and for stay of execution of judgment; the plaintiff recover of the defendant front pay in the amount of $28,490.80 (signed by Chief Judge L. T. Senter Jr. on 5/21/98) COB #50 pg. 131 Date of Entry: 5/21/98 (dlh)
5/28/98	42	NOTICE OF APPEAL of [41-1] order by Sanderson Plmbg Prod FILING FEE $105.00 RECEIPT #51067 Appeal record due on 6/27/98 (dlh)
5/28/98	–	Notice of Appeal and certified copy of docket to USCA: [42-1] appeal by Sanderson Plmbg Prod (dlh)

6/3/98	–	Transcript requested [42-1] appeal by Sanderson Plmbg Prod Transcript due 7/3/98 (dlh)
6/23/98	–	TRIAL TRANSCRIPT filed for dates of 9/8-12/97 (2 volumes) (jlj)
6/23/98	–	NOTICE of Docketing ROA from USCA Re: [42-1] appeal by Sanderson Plmbg Prod USCA Number: 98-60334 (jlj)
6/24/98	–	Certified and transmitted Record on Appeal to U.S. Court of Appeals: [42-1] appeal by Sanderson Plmbg Prod (jlj)
10/19/98	–	Certified and transmitted reconstructed Record on Appeal to U.S. Court of Appeals: [42-1] appeal by Sanderson Plmbg Prod (dlh) [Entry date 10/15/98] [Edit date 10/19/98]
6/18/99	43	JUDGMENT OF USCA (certified copy) Re: [42-1] appeal by Sanderson Plmbg Prod reversing decision of the District Court and rendering judgment in favor of Sanderson; each party to bear own costs; issued as mandate 6/17/99 (mhg) [Entry date 06/21/99] [Edit date 06/22/99]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

ROGER REEVES,

Plaintiff,

v. No.1:96CV197-S-D

SANDERSON PLUMBING PRODUCTS, INC.,

Defendant.

ORDER DENYING SUMMARY JUDGMENT

This cause is before the court upon defendant's motion for summary judgment. The plaintiff has alleged that Sanderson Plumbing violated the Age Discrimination in Employment Act by terminating his employment. Having fully reviewed the record before the court and considering the argument of counsel as well as the applicable case law, this court finds that there is a genuine issue of material fact and that defendant is not entitled to judgment as a matter of law.

Therefore, IT IS ORDERED:

That defendant's motion for summary judgment is denied.

SO ORDERED, this the 19th day of August, 1997.

/s/ L.T. Senter, Jr.
CHIEF JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

ROGER REEVES,

Plaintiff,

v. No.1:96CV197-S-D

SANDERSON PLUMBING PRODUCTS, INC.,

Defendant.

ORDER DENYING JUDGMENT NOTWITHSTANDING THE VERDICT AND GRANTING FRONT PAY

In accordance with a memorandum opinion issued concurrently,

IT IS ORDERED:

That the defendant's motion for judgment notwithstanding the verdict be denied;

That the plaintiff's motion for front pay be granted; and

That plaintiff recover of the defendant front pay in the amount of $28,490.80.

SO ORDERED.

This the 21st day of May, 1998.

/s/ L.T. Senter, Jr.
CHIEF JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-60334

ROGER REEVES,

Plaintiff-Appellee,

versus

SANDERSON PLUMBING PRODUCTS, INC.,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Mississippi
(96-CV-197)

(Filed Apr. 22, 1999)

Before HIGGINBOTHAM, JONES and WIENER, Circuit Judges.

Per Curiam:*

In this age discrimination case, Defendant-Appellant Sanderson Plumbing Products, Inc. ("Sanderson") appeals the district court's order denying Sanderson's post-verdict motion for judgment as a matter of law

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* Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

("JML"), and granting Plaintiff-Appellee Roger Reeves's motion for front pay. After reviewing the record, we conclude that Reeves did not prove a violation of the Age Discrimination in Employment Act ("ADEA") by a preponderance of the evidence. Hence, we reverse the district court's order and render judgment in favor of Sanderson.

I

FACTS AND PROCEEDINGS

Fifty-seven year old Reeves was employed for 40 years by Sanderson – a company involved in the manufacture of toilet seats and covers. At the time of his discharge, Reeves worked in a department of the company known as the Hinge Room. The Hinge Room ran a regular line which was supervised by Reeves, and a special line which was supervised by 35 year old Joe Oswalt. Forty-five year old Russell Caldwell was the manager of the department and he supervised both Reeves and Oswalt.

At all times relevant to this case, a union represented Sanderson's production and maintenance employees. The union contract included general work rules, part of which dealt specifically with attendance. Pursuant to these rules, an employee who was absent from work in excess of five percent of his scheduled hours in a month, or who was late twice in a month, was subject to disciplinary action.

As part of his essential duties as a supervisor, Reeves was required to keep daily, weekly, and monthly records of the attendance and tardiness of employees under his control. These records were reviewed by Reeves for accuracy before he passed them on to Caldwell, who then sent them on to data processing.

In the fall of 1993, Sanderson's Department of Quality Control – under the direction of Powe Chesnut – conducted a review of the operating procedures in the Hinge Room. According to Sanderson, the study revealed productivity problems on Reeves's regular line, stemming from a lax assembly line operation. As a result, Reeves was placed on a 90-day probation for unsatisfactory work performance.

Nearly three years later, in the summer of 1995, Caldwell informed Chesnut – who by this time had become Director of Manufacturing – that the Hinge Room was again having difficulty meeting its production requirements due to pervasive absenteeism and tardiness. Because the Hinge Room records did not reflect employee attendance problems, however, Chesnut requested that Lucille Reeves, then-Manager of Quality Control, conduct an audit of the department's time sheets. This investigation revealed numerous timekeeping errors and misrepresentations on the part of Caldwell, Reeves, and Oswalt. Dana Jester, Vice President of Human Resources, conducted an independent review of the records, and confirmed Quality Control's findings. Armed with these results, Chesnut, Jester, and Vice President of Operations Tom Whitaker, recommended to Company President

Sandra Sanderson[1] that Caldwell and Reeves be dismissed.[2] Ms. Sanderson – who was 52 years old at the time – heeded this advice, firing both Caldwell and Reeves in October 1995. Thereafter, Sanderson filled Reeves's position, on three successive occasions, with men in their thirties.

In June 1996, Reeves filed suit, claiming that Sanderson terminated him because of his age, in violation of the ADEA. Reeves based his claim on two age-related statements allegedly made by Chesnut several months before Reeves's dismissal, namely (1) that Reeves was so old that he "must have come over on the Mayflower," and (2) that he was "too damn old to do the job."

At the conclusion of the trial, the jury returned a verdict in favor of Reeves, awarding him $35,000 and finding that Sanderson discriminated willfully on the basis of age in its adverse employment action. After the verdict, Sanderson renewed its previous motion for JML, and moved, in the alternative, for a new trial. At the same time, Reeves filed a motion seeking front pay. The district court denied Sanderson's motions, and entered judgment in favor of Reeves in the amount of $70,000 – adding $35,000 in liquidated damages to the jury's compensatory

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[1] The record is uncontradicted that Ms. Sanderson had married Chesnut in December 1988.

[2] Chesnut testified at trial that, had Oswalt not voluntarily terminated his employment several months earlier, Oswalt would have been subject to dismissal along with his co-workers, Reeves and Caldwell.

damages in that amount based on the jury's determination of willfulness.[3] In addition, the court awarded Reeves $28,490.80 in front pay, representing two years of lost income. Sanderson timely filed a notice of appeal.

II

ANALYSIS

A. Standard of Review

"A motion for judgment as a matter of law . . . in an action tried by jury is a challenge to the legal sufficiency of the evidence supporting the jury's verdict."[4] We review the denial of such motions *de novo*, applying the same standard as the district court.[5] A JML is appropriate if the "facts and inferences point so strongly and overwhelmingly in favor of one party that a reasonable jury could not have concluded" as the jury did.[6] Applying this standard to the instant case, the district court's judgment should be reversed only if "there is no legally sufficient evidentiary basis for a reasonable jury to find" that Sanderson discharged Reeves because of his age.[7]

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[3] *See* 29 U.S.C. § 626(b) (1990) (providing that "liquidated damages shall be payable only in cases of willful violations of this Act.").

[4] *Harrington v. Harris*, 118 F.3d 359, 367 (5th Cir. 1997).

[5] *Nichols v. Lewis Grocer*, 138 F.3d 563, 565 (5th Cir. 1998).

[6] *Armendariz v. Pinkerton Tobacco Co.*, 58 F.3d 144, 148 (5th Cir. 1995).

[7] FED. R. CIV. PROC. 50(a)(1).

B. The ADEA

The ADEA makes it "unlawful for an employer . . . to discharge any individual . . . because of such individual's age."[8] To establish a violation of the ADEA, a plaintiff must prove, by a preponderance of the evidence, intentional discrimination on the part of his employer.[9] As direct evidence of discrimination is rare, plaintiffs may rely on indirect evidence and reasonable inferences to establish an ADEA claim under the *McDonnell Douglas* burden-shifting analysis.[10]

Under this analysis, a plaintiff must first present a prima facie case, thereby establishing a rebuttable presumption of age discrimination.[11] If the plaintiff meets this burden, the employer must then rebut the presumption by articulating a legitimate, nondiscriminatory reason for the challenged employment action.[12] If the employer presents such evidence, then the presumption of discrimination fades, and the plaintiff must prove that

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[8] 29 U.S.C. § 623(a)(1) (1990).

[9] *Price v. Marathon Cheese Corp.*, 119 F.3d 330, 336 (5th Cir. 1997).

[10] *Id.*

[11] *Id.* There are four elements to a prima facie case of discriminatory discharge under the ADEA, including proof that the plaintiff was (1) discharged; (2) qualified for the position; (3) within the protected class at the time of the discharge; and (4) either i) replaced by someone outside the protected class, ii) replaced by someone in the protected class but younger than the plaintiff, or iii) otherwise discharged because of his age. *Bodenheimer v. PPG Indus., Inc.*, 5 F.3d 955, 957 (5th Cir. 1993).

[12] *Brown v. CSC Logic, Inc.*, 82 F.3d 651, 654 (5th Cir. 1996).

the employer's articulated reason is a pretext for unlawful discrimination.[13]

To establish pretext, a plaintiff must prove not only that the employer's stated reason for its employment decision was false, but also that age discrimination "had a determinative influence on" the employer's decision-making process.[14] Age-related comments may serve as sufficient evidence of discrimination if the remarks are (1) proximate in time to the termination; (2) made by an individual with authority over the challenged employment decision; and (3) related to that employment decision.[15] Mere "stray remarks" – i.e., comments which are "vague and remote in time" – however, are insufficient to establish discrimination.[16]

1. Sufficiency of the Evidence

On appeal, Sanderson does not challenge the sufficiency of the evidence supporting Reeves's prima facie case of age discrimination.[17] Rather, Sanderson argues

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[13] *Price*, 119 F.3d at 337.

[14] *Id.*

[15] *Brown*, 82 F.3d at 655.

[16] *Id.*; *Price*, 119 F.3d at 337.

[17] Indeed, when, as here, a case has already been tried on the merits, whether the plaintiff properly made out a prima facie case is no longer relevant. *United States Postal Service Bd. of Governors v. Aikens*, 460 U.S. 711, 715, 103 S.Ct. 1478, 75 L.Ed.2d 403 (1983). Instead, the important inquiry is whether the plaintiff has "produced sufficient evidence for a jury to find that discrimination has occurred." *Walther v. Lone Star Gas Co.*, 952 F.2d 119, 123 (5th Cir. 1992).

that it articulated a legitimate, nondiscriminatory explanation for firing Reeves: Reeves's shoddy record keeping. Because Reeves failed to offer evidence sufficient to prove *both* that this reason is untrue *and* that age is what really triggered Reeves's discharge, argues Sanderson, it is entitled to judgment as a matter of law. We agree.

At trial, Chesnut testified that he became aware of timekeeping problems in the Hinge Room after Caldwell – the department manager – complained of inadequate production resulting from absenteeism. This complaint prompted an investigation which uncovered numerous errors in the department's attendance records. Because of specific misrepresentations and errors made by Reeves, argues Sanderson, employees under Reeves's control were being paid for time they did not work, and were not being disciplined for their habitual absenteeism and tardiness. Reeves testified that he was familiar with the company's attendance policy, as well as his timekeeping responsibilities as a supervisor under that policy. In light of this admission, argues Sanderson, Reeves's failure to keep accurate records in accordance with the policy amounts to unsatisfactory work performance, which is a legitimate, nondiscriminatory basis for dismissal.

Reeves attempts to cast suspicion on Sanderson's proffered explanation by first asserting that Sanderson's explanation changed between the time of Reeves's discharge and trial. When he was fired, claims Reeves, he was told that he had caused a *specific* employee to be paid for time she had not actually worked. In contrast, Reeves argues, Sanderson defended its employment decision at trial by claiming that Reeves's timekeeping mistakes had resulted in the overpayment of *numerous* employees.

Although proof that an employer lied to its employee about its reasons for discharge does, under some circumstances, raise a "red flag" of pretext,[18] the inconsistency noted by Reeves in this case can hardly be considered mendacious. Sanderson has, at all times, supported its decision to fire Reeves with the charge that Reeves's work performance was unsatisfactory. That Sanderson may have explained this charge at the time of dismissal with only one instance of inaccurate record keeping, but buttressed its defense by adducing evidence of other similar infractions at trial smacks more of competent trial preparation than telling a lie.

Reeves goes on, however, to challenge the veracity of Sanderson's allegation that he engaged in inaccurate record keeping at all. At trial, Reeves testified that he was always very careful to ensure that his employees arrived at their work stations on time. In addition, he claimed that any employee who was permitted to clock in early or stay late – and thereby receive additional pay – had extra work assignments to perform. According to Reeves, if any record keeping errors were made, they were the result of Caldwell's inattentiveness and not his own. Moreover, Reeves points out, at trial Chesnut was unable to testify as to the cost to the company, if any, of Reeves's alleged record falsifications. Based on this evidence, claims Reeves, a reasonable jury could have found that Sanderson's explanation for its employment decision was pretextual.

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[18] *Haun v. Ideal Indus., Inc.*, 81 F.3d 541, 546 (5th Cir. 1996).

On this point, Reeves very well may be correct. Even so, whether Sanderson was forthright in its explanation for firing Reeves is not dispositive of a finding of liability under the ADEA. We must, as an essential final step, determine whether Reeves presented sufficient evidence that his age motivated Sanderson's employment decision.

In an attempt to satisfy this burden at trial, Reeves testified that Chesnut – while serving as Director of Manufacturing – made the above-quoted age-related comments just months before Reeves was terminated. As Chesnut was one of three people who recommended his termination to Ms. Sanderson, argues Reeves, Chesnut's comments should be taken as sound evidence of the company's underlying discriminatory motives.

Reeves also expressed the belief that he was treated less favorably than Sanderson's younger employees. This belief, Reeves now claims, is confirmed by Oswalt's testimony that Chesnut treated Reeves like a child. As further evidence of Sanderson's disparate treatment, Reeves points to his 1993 probation, and notes that the 30-something Oswalt was not put on probation despite a similarly lagging production level on the Hinge Room's special line. Likewise, argues Reeves, when Quality Control initiated its investigation of his timekeeping records in 1995, none of the supervisors from other departments were singled out for such scrutiny.

Considering all of the evidence in a light most favorable to Reeves, we nevertheless conclude that there was insufficient evidence for a jury to find that Sanderson

discharged Reeves because of his age. Despite the potentially damning nature of Chesnut's age-related comments, it is clear that these comments were not made in the direct context of Reeves's termination. In addition, Chesnut was just one of three individuals who recommended to Ms. Sanderson that Reeves be terminated, and there is no evidence to suggest that any of the other decision makers were motivated by age. In fact, the record shows that at least two of the decision makers were themselves over the age of 50 – Ms. Sanderson at 52, and Jester at 56. Furthermore, the fact remains that, as a result of the 1995 investigation, each of the three Hinge Room supervisors was accused of inaccurate record keeping, including not only Reeves and Caldwell, but 35 year old Oswalt as well. Finally, there is evidence that, at the time Reeves was dismissed, 20 of the company's management positions were filled by people over the age of 50, including several employees in their late 60's.

Based on our plenary review, we find that Reeves did not introduce sufficient evidence of age discrimination to support the jury's finding of liability under the ADEA. For this reason, we reverse and render judgment in favor of Sanderson.

REVERSED AND RENDERED.

DEFENDANT'S
EXHIBIT
D-5

HINGEROOM ABSENTEEISM
REGULAR LINE

	Date	Code
Melvin Brownlee	7/11/95	01
	7/12/95	01
	7/17/95	02
	8/29/95	02
	9/08/95	01
	9/11/95	01
	9/12/95	01
	9/25/95	01

REMARKS: He should have received a "Write-up" for July & September.

Diane Henderson	7/19/95	02
	8/09/95	02
	8/10/95	01
	8/23/95	01
	9/05/95	01
	9/06/95	01
	9/19/95	01

REMARKS: She should have received a "Write-up" for July & September.

Diane Lanier	8/10/95	01
	9/19/95	01
	9/20/95	01
	9/27/95	01

REMARKS: Received 1.25 overtime hours w/e 7/16/95 – received .33 hours w/e 7/17/95.
She should have received a "Write-up" for September.

D.C. Mitchell	7/14/95	01
	7/18/95	01
	7/24/95	01
	7/25/95	01
	7/28/95	01
	7/31/95	01
	8/01/95	01
	8/02/95	01
	8/07/95	01
	8/08/95	01
	8/09/95	01
	8/14/95	01
	8/15/95	01
	8/21/95	01
	8/25/95	01
	8/28/95	01
	8/29/95	01
	9/05/95	01
	9/08/95	01
	9/14/95	01
	9/18/95	01
	9/19/95	01
	9/20/95	05
	9/25/95	01
	9/28/95	01

REMARKS: He should have received a "Write-up" for July, August, and September.

Marcella Hogan	7/21/95	02 – line didn't run
	7/28/95	08 – line did run
	9/21/95	02 – no punch

REMARKS: Received .70 overtime w/e 7/16/95 – 1.09 overtime 7/23/95 – 1.35 overtime 7/30/95 – 2 hours overtime 9/3/95 1.10 overtime 9/10/95 – 1 hour overtime 9/17/95 – 2 hours overtime 10/1/95 – 1.47 overtime 9/24/95 – 1.75 overtime 8/6/95 – 1.5 straight time 8/20/95 – 1.75 overtime 8/13/95 – 2 hours overtime 8/27/95
He should have received a "Write-up" for July.

Frederick Brownlee	7/11/95	01
	7/17/95	01
	9/13/95	05
	9/18/95	01
	9/21/95	01
	9/25/95	01

REMARKS: He should have received a "Write-up" for September.

Sandra Edwards	7/26/95	01
	7/28/95	02
	8/22/95	05
	9/17/95	02
	9/22/95	01
	9/25/95	05
	9/07/95	05

REMARKS: She should have received a "Write-up" for July.

Eric Harris	7/20/95	09 – No punch
	8/21/95	01
	9/01/95	01
	9/14/95	01

Lee Garner	7/26/95	05
	8/02/95	01
	8/09/95	01
	8/10/95	01
	8/11/95	01
	8/14/95	01
	8/15/95	01
	8/29/95	02
	8/30/95	05
	9/11/95	01

REMARKS: He should have received a "Write-up" for August.

Tommie C. Williams	8/07/95	01
	8/09/95	01
	8/28/95	05
	9/12/95	01
	9/18/95	01
	9/27/95	01

REMARKS: He should have received a "Write-up" for September.

HINGEROOM ABSENTEEISM
SPECIAL LINE

Sheila Tuggle (Jefferson)	7/21/95	01
	7/25/95	01
	8/04/95	01
	8/14/95	05
	9/08/95	05 x 02
	9/11/95	05 x 08
	9/28/95	01
	9/20/95	01
	9/22/95	01

REMARKS: She should have received a "Write-up" for September. 7/14/95 paid 1/2 hour straight through lunch

James Bardley	7/18/95	01
	7/15/95	05
	8/08/95	05
	8/09/95	01
	8/10/95	01
	9/06/95	05 – 04

REMARKS: He should have received a "Write-up" for July.

Shirley Bradford	7/12/95	01
	7/13/95	01
	7/14/95	01
	7/17/95	01
	7/15/95	05
	8/09/95	01
	8/10/95	02
	9/07/95	05
	9/11/95	09
	9/28/95	01

REMARKS: .11 overtime hours 7/23/95 – .28 overtime hours 7/3/95
She should have received a "Write-up" for July.

Darla Pippins	7/10/95	01
	7/11/95	01
	7/13/95	01
	7/14/95	01
	7/15/95	01
	7/18/95	01
	7/19/95	01
	7/20/95	05
	7/21/95	01
	7/24/95	01
	7/25/95	01
	8/01/95	01
	8/02/95	05
	8/03/95	01

	8/09/95	01
	8/14/95	05
	8/17/95	01
	8/18/95	01
	8/22/95	01
	9/01/95	01
	9/07/95	05
	9/19/95	05
	9/20/95	01
	9/21/95	01
	9/22/95	01
	9/25/95	01
	9/26/95	01

REMARKS: If she was not late, then she was paid straight through which accumulated into overtime. If not, she should have received a "Write-up" for July, August, and September.

Jackie Sanders	7/10/95	01	
	7/14/95	05	
	7/15/95	01	
	7/19/95	01	
	7/21/95	05	– but punched in and out
	7/25/95	01	
	7/27/95	05	
	8/03/95	01	
	8/11/95	01	
	8/15/95	02	
	8/23/95	02	
	9/15/95	08	– time sheet paid her for a half day but absentee report showed 8 hours

	9/19/95	05
	9/21/95	01
	9/26/95	05

REMARKS: She should have received a "Write-up" for July and September.

Edna Ussery	7/15/95	05
	8/29/95	01
	8/31/95	01
	9/19/95	05

REMARKS: She should have received a "Write-up" for July.

Tawanda Deloach (Brooks)	7/20/95	01
	9/11/95	05
	9/27/95	02

REMARKS: She should have received a "Write-up" for September.

Mattie Williams	8/21/95	05
	9/05/95	05
	9/06/95	05
	9/07/95	05
	9/20/95	05
	9/28/95	05

REMARKS: These dates were not coded and she should have received a "Write-up" for September.

Norma Henderson	7/25/95	01	
	8/04/95	01	
	8/11/95	05	– paid straight through lunch docked 1 hour instead 1 ½ hours
	8/14/95	05	
	8/18/95	01	
	8/23/95	01	

	8/24/95	01
	9/05/95	01
	9/12/95	09
	9/20/95	01
	9/21/95	09
	9/25/95	09

REMARKS: She should have received a "Write-up" for August.

Leon King	8/22/95	01
	9/13/95	01
	9/14/95	05
	9/15/95	05
	9/18/95	01
	9/19/95	01
	9/21/95	05 – 08
	9/25/95	01 – 09
	9/26/95	01
	9/27/95	01

REMARKS: Received – 1.5 overtime 8/21/95 – .5 overtime hours 8/25/95.
.50 overtime hours 9/5/95
He should have received a "Write-up" in September.

HINGEROOM ABSENTEEISM
VIEW PACK LINE

Brenda Hamilton	7/10/95	08 – no punch
	8/02/95	01
	8/03/95	01
	8/09/95	01
	8/11/95	01
	8/16/95	01
	8/21/95	05
	9/28/95	05 – 02

REMARKS: She should have received a "Write-up" for August.

Billy Isaac	9/29/95	05 – 02

REMARKS: .25 overtime hours 9/27/95 – He is a "new Hire" – and should have been terminated.

HINGEROOM ABSENTEEISM
REGULAR LINE

Genie Coley	9/05/95	08
	9/07/95	08
	9/11/95	02
	9/12/95	02

Received 1.38 overtime w/e 7/16/95 – 1.85 hours overtime w/e 7/30/95 1.25 overtime w/e 8/6/95 – .25 overtime 8/13/95 – 1.25 hours overtime 8/20/95 – 1 hour overtime 8/27/95 – 1.25 hours overtime 9/3/95 1 hour overtime 9/24/95 – 1.5 hours overtime 10/1/95

REMARKS: W/E 9/17/95 absentee report showed 8 hours – 02 (9/11/95) and 8 hours – 02 (9/12/95) but the week ending time sheet showed her written in for 8½ hours 9/11/95 and 9/12/95 – received 2½ hours overtime. She should have received a "Write-up" in September.

DEFENDANT'S EXHIBIT D-5 A

SUMMARY OF VIOLATIONS
COMMITTED BY ROGER REEVES

Name	
Melvin Brownlee	On July 11 and 12, 1995, was late reporting to work and should have been coded 01 by Mr. Reeves. However, Mr. Brownlee was not coded as being late on either day. Mr. Brownlee was also absent on July 17. Additionally, on September 8, 11, 12, and 25 of 1995, Mr. Brownlee was late but not coded as such by Mr. Reeves. Because of his tardiness on these occasions, he should have received a reprimand issuance for both the months of July and September, but because of this failure on the part of Mr. Reeves and/or condoned by Mr. Caldwell, no such report was made, and Mr. Brownlee was not issued any disciplinary action for those months.
Diane Henderson	Mrs. Henderson was tardy on August 10, 1995, but was not coded as such by Mr. Reeves. Likewise, she was tardy on August 23, 1995, but was not coded as such by Mr. Reeves. Mrs. Henderson was tardy on September 5, 6, and 19, but was not coded as such by Mr. Reeves and as a result though under the policy she should have

	received a disciplinary action in September. She did not.
Diane Lanier	This employee was allowed to clock in prior to 6:50 on July 11, 13, and 14, which is a violation of company policy, and thus was paid hours for time when she did not work. This resulted in her being credited with 1.25 overtime hours for the week ending July 16, which she should not have received. It is the responsibility of the immediate supervisor not to allow employees to clock in before 6:50 because under the clock system, employees who clock in at 6:50 are expected to be at work at 7:00 and are paid from 7:00 o'clock on, whereas if employees do clock in prior to 6:50, their time shows from the time they clock in until 7:00 and it is the responsibility of the immediate supervisor to make this correction on the daily time sheet as aforementioned. Additionally with respect to Ms. Lanier, on August 10, 1995, she was tardy but the same was not coded by Mr. Reeves. Additionally, Ms. Lanier was tardy on September 19, 20, and 27, 1995, and should have received disciplinary write-up but because of failure of the Plaintiff and his supervisor to follow through in

this regard, there was no such disciplinary write-up.

D. C. Mitchell

Because of tardiness of this employee on July 14, 18, 24, 25, 28, and 31, 1995, this employee should have been issued a disciplinary warning in July. However, Plaintiff failed to code his tardiness and thus, no write-up occurred; additionally, this employee was tardy on August 1, 2, 7, 8, 9, 14, 15, 21, 25, 28, and 29, 1995, and should have been issued a disciplinary warning but because of failure on the part of the Plaintiff to code such on the aforementioned records, no disciplinary action was issued. Additionally, on September 5, 8, 14, 18, and 19, this employee was tardy but was not coded as such, and on September 20, this employee left early, but was coded as being sent home early (which would not have constituted a violation of the attendance policy), which was not correct in that this employee violated the attendance policy by leaving prior to the end of the shift. This employee should have received disciplinary action for July, August, and September (assuming he had no action prior to July, the September should have mandated suspension), but because of failure on the part of the Plaintiff to properly code, no

write-up or disciplinary action issued to this employee.

Marcella Hogan

Because of Plaintiff allowing this employee to clock in prior to the required time and not coding and reflecting his time card to show pay from 7:00 a.m. rather than prior thereto, this employee was paid overtime (when he should not have been) for the following weeks:

0.70 hour overtime for the week ending July 16, 1995; 1.09 hours overtime for the week ending July 23, 1995; 1.35 hours overtime for the week ending July 30, 1995; 2.00 hours overtime for the week ending September 3, 1995; 1.10 hours overtime for the week ending September 10, 1995; 1.00 hour overtime for the week ending September 17, 1995; 2.00 hours overtime for the week ending October 1, 1995; 1.47 hours overtime for the week ending September 24, 1995; 1.75 hours overtime for the week ending August 6, 1995; 1.5 hours straight time for the week ending August 20, 1995; 1.75 overtime for the week ending August 13, 1995; and 2.00 hours overtime for the week ending August 27, 1995.

Additionally, in the case of this employee, the line did not operate on July 21, yet Plaintiff made an

	error in the daily or weekly time sheets by coding this employee as being out that day which reflected on his attendance policy, and additionally on July 28, when the line ran, this employee did not report for work, but was coded by the Plaintiff erroneously to have been sent home early — which was not the case in that the line worked. Accordingly, there were two errors made here. Because of the hours worked by the company during July and because of these errors, this employee did not receive any disciplinary action for July, which should have been handed down.
Frederick Brownlee	This employee was tardy on July 17, 1995, but no coding was made of the tardiness of this employee by Mr. Reeves. Additionally, on September 13, this employee left early but no coding was made of such. On September 18, 21, and 25, the employee was tardy. This employee should have received a write-up for September but because of failure of the Plaintiff to code the aforementioned tardies, no disciplinary action was issued.
Sandra Edwards	This employee should have received disciplinary action in July for tardiness but did not receive such because Plaintiff and his

	supervisor failed to issue such disciplinary action.
Lee Garner	This employee was absent and/or tardy on August 2, 9, 10, 11, 14, 15, 29, and 30, 1995, but only coded to have been out two hours on August 29 and out two hours on personal business on August 30, and accordingly, because of this failure on the part of Plaintiff, this employee was not issued disciplinary action as he should have been for the month of August.
Tommie C. Williams	This employee was tardy on August 7, 1995, but was not coded as such by Plaintiff. Additionally, on September 12, 18, and 27, 1995, he was tardy but there was no coding of such by Plaintiff. According to the attendance policy and the tardiness record, this employee should have received disciplinary action in September of 1995, but did not because of the failure on the part of the Plaintiff to code.
Brenda Hamilton	This employee was tardy and/or absent on August 2, 3, 9, 11, 16, and 21, 1995. Plaintiff only coded absence and/or tardiness for August 16, 21, 24, and 25, and according to the employee's actual attendance, she should have received disciplinary action for August, but did not due to the

failure of Plaintiff to code the same.

Billy Isaac — This employee was a probationary employee in September of 1995. This employee was absent on September 29, but no coding or documentation was made of the same by Plaintiff. Inasmuch as this employee was a probationary and/or "new hire", he should have been terminated.

Genie Coley — This employee was not scheduled to be paid and to report for work until 7:00 a.m. However, because Plaintiff allowed this employee to clock in prior to schedule and not code the necessary changes to show pay only from 7:00 a.m., she received pay for time when she was not supposed to as follows: 1.38 hours overtime for the week ending July 16, 1995; 1.85 hours overtime for the week ending July 30, 1995; 1.25 hours overtime for the week ending August 6, 1995; .25 hours overtime for the week ending August 13, 1995; 1.25 hours overtime for the week ending August 20, 1995; 1.00 hours overtime for the week ending August 27, 1995; 1.25 hours overtime for the week ending September 3, 1995; 1.00 hour overtime for the week ending September 24, 1995; and 1.50 hours overtime for the week ending October 1, 1995.

Additionally, on the daily time records, this employee was shown as being absent on September 11 and 12, but on the weekly time records, Plaintiff made a notation that the employee worked a full eight hours on these days and should be paid accordingly. Based on this improper change in coding on the weekly time record, the employee was erroneously paid.